

Question Period Note

**REPEALING KEY ELEMENTS OF THE *ANTI-TERRORISM ACT*, 2015
(FORMER BILL C-51)**

ISSUE:

The Government's plans to fulfil its commitment to introduce legislation to repeal controversial elements of Bill C-51 passed by the previous Parliament.

PROPOSED RESPONSE:

- **As my mandate letter clearly directs, I am working closely with the Minister of Public Safety and Emergency Preparedness in efforts to develop and introduce legislation to repeal key elements of Bill C-51, strengthen accountability with respect to national security, and better balance collective security with rights and freedoms.**
- **Consultations with Canadians will inform our analysis of these fundamental questions.**
- **As mandated by the Prime Minister, Department of Justice officials are currently reviewing our litigation strategy with the objective of advancing positions that are consistent with Government commitments, the Constitution and our Canadian values.**
- **The Government is committed to bring amendments to Bill C-51 that protect the rights and freedoms guaranteed by the Charter, while at the same time ensuring the safety and security of all Canadians.**

BACKGROUND:

The *Anti-terrorism Act, 2015* (the Act) has five parts.

Part 3 of the Act, which falls under your responsibility, amended the *Criminal Code* to lower the legal thresholds for using both the terrorism peace bond and the recognizance with conditions; create a new offence prohibiting the advocacy or promotion of the commission of terrorism offences in general and two warrants in relation to terrorist propaganda; and provide better protections for witnesses in national security proceedings.

Parts 1, 2, 4 and 5 of the Act fall under the responsibility of the Minister of Public Safety, but the Department of Justice provides advisory services to the Department of Public Safety and Emergency Preparedness.

Part 1 enacted the *Security of Canada Information Sharing Act*, which authorizes federal government institutions to disclose information relevant to acts that undermine the security of Canada with selected federal government institutions with national security jurisdiction or responsibilities.

Part 2 enacted the *Secure Air Travel Act*, which provides a new legislative framework for identifying and responding to persons who may engage in an act that poses a threat to transportation security or who may travel by air for the purpose of committing specific terrorism offences.

Part 4 amended the *Canadian Security Intelligence Service Act*, permitting CSIS to take, within and outside Canada, measures to reduce threats to the security of Canada.

Part 5 amended the *Immigration and Refugee Protection Act* to, among other things, better protect classified information during immigration proceedings.

The Act drew significant criticism at the time of its passage and the Liberal Party of Canada committed in its platform to repeal key elements thereof.

Your mandate letter from the Prime Minister provides that you are expected to "support the Minister of Public Safety and Emergency Preparedness in his efforts to repeal key elements of Bill C-51, and introduce new legislation that strengthens accountability with respect to national security and better balances collective security with rights and freedoms."

CONTACTS:

Prepared by:

Rémi Chapadeau, Senior Counsel, National Security Law, Public Safety, Defence and Immigration Portfolio

Tel. N°:

613-954-1432

Approved by:

Elisabeth Eid, Assistant Deputy Attorney General, Public Safety, Defence and Immigration Portfolio

Tel. N°:

613-952-4774



Department of Justice
Canada

Ministère de la Justice
Canada

SCENARIO

NUMERO DU DOSSIER/FILE #: 2016-007892

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

TITRE/TITLE: Public Safety Briefing on Bill C-51

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- You are scheduled to attend a briefing on Bill C-51 on Monday April 18, 2016, at 7:15 p.m. The meeting is being held in room 200 at 144 Wellington Street, the Sir John A. McDonald building.
- Previously scheduled as a Technical Briefing for Parliamentarians, this meeting is now a briefing for only the Minister of Public Safety and Justice officials.
- Attached at Annex 1 are suggested talking points to support your participation at this briefing.

Soumis par (secteur)/Submitted by (Sector):

Policy Sector

Responsable dans l'équipe du SM/Lead in the DM Team:

Stéphanie Poliquin

Revue dans l'ULM par/Edited in the MLU by:

Sarah McCulloch

Soumis au CM/Submitted to MO:

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Talking Points *Anti-terrorism Act, 2015*

- **The Government is committed to meaningful engagement with Canadians.**
- **I am working closely with Minister Goodale on the consultation process, and the views of Canadians will inform our analysis of legislative amendments to the *Anti-terrorism Act, 2015* (formerly Bill C-51).**
- **Our goal is to ensure that our overall national security framework maintains collective security while protecting rights and freedoms.**
- **Tonight's session with you marks a very good start.**
- **This occasion demonstrates the importance that we attach to Parliamentary consideration of this matter, among others of course.**

- **As Minister of Justice, my particular policy responsibilities pertain to Part 3 of the Act, which includes *Criminal Code* provisions in relation to:**
 - **Terrorism prevention measures, namely, the terrorism peace bond and the recognizance with conditions;**
 - **The advocacy and promotion offence that criminalizes the advocacy or promotion of the commission of terrorism offences in general;**
 - **Giving courts the authority to order the seizure and forfeiture of tangible terrorist propaganda material and the removal of terrorist propaganda online from Canadian websites; and**
 - **Protecting witnesses and other participants in national security proceedings and prosecutions.**

- I look forward to working with Minister Goodale in efforts to further engage with Parliamentarians, and with Canadians more generally, on the *Anti-terrorism Act, 2015*.

PREPARED BY
Doug Breithaupt
Director and General Counsel
Criminal Law Policy Section
(613) 957-9606

Meeting with Minister Goodale and Justice Officials (C-51)

April 18, 2016 – 19:15

172-E Centre Block, Centre Block

The PS deck that had been prepared for the meeting, originally planned for Parliamentarians

1. Briefing for Parliamentarians : Evolution of the National Security Context and Anti-Terrorism Act, 2015”)

Decks presented during the MO briefing that took place on April 12:

2. National Security and the Anti-terrorism Act, 201
3. Bill C-51, the Anti-terrorism Act, 2015 Part 3 Criminal Code – Ministerial briefing



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BUILDING A **SAFE AND RESILIENT CANADA**



Briefing for Parliamentarians: Evolution of the National Security Context and *Anti-terrorism Act, 2015*

April 18, 2016

Canada

Threat Environment Following 9/11



2001-2002: A SAFER AND RESILIENT CANADA

- Significant new threat posed by al Qaida (AQ) and its affiliates
- Urgent need for legislative amendments following 9/11
 - Significant gaps identified domestically and internationally; UN Security Council Resolutions adopted
- Canadian Parliament enacted the *Anti-terrorism Act* (2001)
 - amended the *Criminal Code* to add terrorism chapter including definitions, offences, listing process, and anti-terrorism powers (e.g. investigative hearings and recognizance with conditions with sunset clauses)
 - Created the *Security of Information Act* and the *Charities Registration (security Information) Act*
 - legislated the Communications Security Establishment's mandate (had no legislative basis prior) through amendments to the *National Defence Act*
 - expanded the mandate of the Financial Transactions and Reports Analysis Centre (FINTRAC) through the *Proceeds of Crime (Money Laundering and Terrorist Financing) Act*
 - Amended other Acts, including the *Canada Evidence Act*
- Government of Canada releases *Securing an Open Society: Canada's National Security Policy* (2004), establishing the Integrated Terrorism Assessment Centre, the Cross-Cultural Roundtable on Security and the Government Operations

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Drivers for National Security Policy Development



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- Throughout the 2000s, several independent bodies examined Canada's national security framework, usually in response to specific events
- Some of the themes that emerged included:
 - National security accountability, including role for Parliamentarians (*Arar Inquiry*, 2006)
 - Information sharing to respond effectively to terrorist threats (*Arar Inquiry*, 2006 and *Air India Commission*, 2010)
 - CSIS authority to take direct action to reduce threats (*Security Intelligence Review Committee*, 2010 and *Senate Special Committee on Anti-terrorism*, 2011)
- Constitutionality of security certificates, including the introduction of special advocates and the scope of disclosure requirements (Supreme Court of Canada: 2007, 2008 and 2014)
- Parliamentary Review of the *Anti-terrorism Act* (2001) from 2004 to 2007
- Policy development pursued these themes in late 2000s to early 2010s
 - *Air India Action Plan* (2010): information sharing for national security purposes, and improvements to aviation security
 - *Canada's Counter-terrorism Strategy* (2013): pillars of Prevent, Detect, Deny and Respond
 - *Combating Terrorism Act* (2013): new offences of leaving Canada to participate in terrorism offences; re-enactment of investigative hearings and recognizance with conditions



New Threat Environment



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- The threat of extremist travellers grew due to the rise of splinter groups from al-Qaeda (AQ), such as AQAP, AQIM, al-Shabab
- The threat of the Islamic State in Iraq and the Levant (ISIL), an offshoot and competitor of AQ, significantly expanded in 2014
- ISIL's "Caliphate" in Iraq/Syria is more attractive and accessible for extremist travelers than any AQ-held base, and its online reach far greater
 - Approximately 180 "Canadian" extremists abroad for terrorism-related purposes (close to 100 in Iraq/Syria)
 - 60 returnees to Canada
- Supporters and operatives use social media to spread ISIL's propaganda, groom and recruit individuals around the world
- Inspired small group and lone actor attacks are the most pressing threat; plots facilitated and directed from abroad are of growing concern
 - Paris, Burkina Faso, Australia, Indonesia, Brussels, etc.



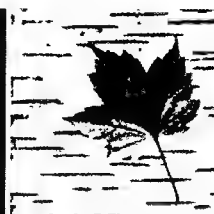
Addressing a New Threat



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- Policy development that began in early 2010s was further influenced by changes in the threat environment
- October 2014 terrorist attacks were the pivotal point for Canada
- **Former Bill C-51, the *Anti-terrorism Act, 2015*, amalgamated years of policy development (Parts 1, 2, 4 and 5 of the Bill) in one legislative package**





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Anti-terrorism Act, 2015



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Part 1 – *Security of Canada Information Sharing Act (SCISA)*



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- **ISSUE:**

- Legal barriers and ambiguous authorities delayed and restricted some national security information sharing amongst the Government of Canada
- Result: information sharing was delayed or did not take place

- **Example:**

- Public Services and Procurement Canada was not explicitly authorized to share information with CBSA when dealing with potentially illicit export of goods or national security activities
- *Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (2010) and the Auditor General of Canada (2004 and 2009), identified similar gaps and called for reforms*



Part 1 – The SCISA



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What does SCISA do?

- Authorizes Government institutions, at their discretion, to disclose information to designated recipient institutions
 - only if the information is relevant to the recipient's national security jurisdiction or responsibilities
- Does not compel the sharing of information
- Does not change existing collection authorities nor does it create new ones (institutions can only receive what is already permitted)
- Does not override statutory restrictions on information sharing
 - e.g. Employment and Social Development Canada still bound by limits in their enabling legislation
- Former Bill C-51 amended six other acts to resolve discrete barriers:
 - *Customs Act; Department of Fisheries and Oceans Act; Income Tax Act; Excise Tax Act; Excise Act, 2001; Chemical Weapons Convention Implementation Act*



Part 1 – SCISA's Implementation



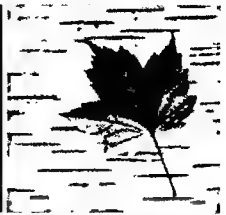
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Status of implementation:

- Executive heads of disclosing institutions determine parameters for sharing
- Only heads of recipient institutions or their delegates may receive information under the SCISA
 - Formal delegation instruments put in place
- Training material and guidance document provided to all government institutions
 - ongoing consultations with Office of the Privacy Commissioner to evergreen these materials



Part 2 – *Secure Air Travel Act (SATA)*



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- **ISSUE:**
 - Gap in ability to address terrorist travel
 - No solid legal foundation for the Passenger Protect Program (PPP), including no right to recourse
- **Example:**
 - Prior to SATA, a radicalized individual travelling to Syria to join ISIL would not likely present an “imminent threat to aviation security”, and therefore could not be stopped from boarding a plane
- *Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (2010) identified gaps and called for reforms*



Part 2 – *SATA*



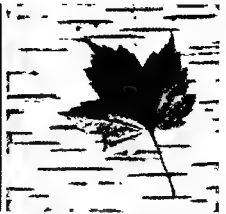
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What does SATA do?

- Expands the PPP mandate to include threats to transportation security, and travel by air for terrorism-related purposes
 - Provides additional measures to prevent individuals from travelling by air to commit certain terrorism offences
- Minister of Public Safety and Emergency Preparedness, or his delegate, is the principal decision maker under PPP with responsibility for:
 - listing individuals
 - designating appropriate response measures
 - providing administrative recourse to those denied boarding under PPP
- Minister of Transport is responsible for:
 - distributing the list to air carriers
 - communicating response measures to air carriers



Part 2 – SATA Implementation



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Status of implementation:

- The enhanced PPP mandate and the *Secure Air Travel Regulations* entered into force on August 1, 2016.
- Together with its partners (i.e., Canada Border Services Agency, Canadian Security Intelligence Service, Royal Canadian Mounted Police and Transport Canada), Public Safety Canada has now fully implemented the enhanced PPP.
- On March 10, 2016, Prime Minister and U.S. President announced the sharing of respective aviation security lists through an information sharing agreement.



Part 3 – *Criminal Code* Amendments



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- **ISSUES:**

- Concerns were expressed as to whether **terrorism peace bonds** (i.e. a measure to prevent specific individuals from committing terrorism offences) and the **recognizance with conditions** (i.e. a measure to prevent the carrying out of a terrorist activity) should be improved to make it easier for these measures to be used to prevent terrorism, and to create increased efficiencies
- **Advocacy offence:** *Criminal Code* contained several terrorism offences, including counselling the commission of a specific terrorism offence; unclear if counselling terrorism offences generally covered
- **Warrants of seizure:** only voluntary removal as these powers did not exist for terrorist propaganda
- **Witness protection measures:** limited definition of justice system participant, limiting who could be protected; intimidation undermines the truth-seeking function of the courts



Part 3 – *Criminal Code* Amendments Terrorism Peace Bonds (810.011)



011 / 117 - 967-8111 / 1-877-302-3434

- Terrorism peace bonds were amended as follows:
 - Lowered thresholds to “may commit” a terrorism offence
 - Increased maximum duration to 5 years (from 2 years) if previous conviction for a terrorism offence
 - Increased maximum sentence for a breach to 4 years (from 2 years); applies to all recognizances / peace bonds
 - Required geographical conditions or passport surrender conditions to be considered
 - Created system efficiencies (applies to all recognizances and peace bonds)

- Safeguards:
 - Attorney General consent required
 - Defendant can apply to vary the conditions



Part 3 – *Criminal Code* Amendments

Recognizance with Conditions (83.3)



SAFER AND RESILIENT CANADA

- Recognizances with conditions were amended as follows:
 - Lowered the threshold to a terrorist activity “may be” committed and that conditions are “likely” to prevent
 - Increased the maximum duration to 2 years if previous conviction for a terrorism offence (from 1 year) and sentences for a breach to 4 years (from 2 years)
 - Detention up to a maximum of 7 days (1 day police detention, 6 days judge-ordered detention) with safeguards
- Safeguards:
 - Consent of the Attorney General of Canada
 - Defendant can apply to vary the conditions
 - Subject to a five-year sunset clause and annual reporting requirements



Part 3 – *Criminal Code* Amendments

Advocacy Offence (83.221)



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- A new advocacy offence was added:
 - New offence of knowingly advocating or promoting the commission of terrorism offences in general
 - Key elements modelled on criminal law governing counselling the commission of a crime
- Safeguards:
 - Requires Attorney General consent
 - High *Mens Rea* requirements modelling on mens rea requirements for counselling



Part 3 – *Criminal Code* Amendments

Warrants of Seizure (83.222 and 83.223)



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- New provisions created:
 - Created two new warrants (for seizure in hard form or for removal from Canadian websites) to apply to terrorist propaganda, which is material that counsels the commission of a terrorism offence or that advocates or promotes the commission of terrorism offences in general
 - Modelled on existing warrants or seizure for child pornography, voyeuristic recordings, intimate images and hate propaganda
 - Amended the *Customs Tariff* to prevent the import of terrorist propaganda
- Safeguards for warrants:
 - Attorney General consent
 - Ability to make representations to judge



Part 3 – *Criminal Code* Amendments

Witness Protection Measures



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- Enhanced existing protections for witness as follows:
 - Expanded the definition of “justice system participant” in the intimidation offence
 - Addressed public reporting requirements for wiretaps
 - Provided the courts with greater discretion to make orders to allow witnesses to testify with some level of accommodation
- Supported and informed by work undertaken with the provinces and territories



Part 4 – CSIS' Threat Reduction Mandate



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ISSUE:

- Prior to the *Anti-terrorism Act, 2015*, CSIS's mandate was limited to collecting and analyzing intelligence, and advising Government
 - CSIS could not take direct action to reduce threats, although some of its intelligence collection had the *incidental* or *secondary* effect of reducing a threat
- The lack of clear authority drew criticism from the Security Intelligence Review Committee (SIRC) and the 2011 Senate Special Committee on Anti-Terrorism
- Opportunities to respond to and prevent threats from materializing were being missed
 - CSIS is the sole agency exposed to the full spectrum of national security threats, presenting it with unique opportunities to respond
 - CSIS is well positioned to address threats that may not meet the threshold for investigation or action by other government agencies



Part 4 – CSIS's Threat Reduction Mandate



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What do the amendments do?

- Gave CSIS a clear mandate to take measures to reduce threats to the security of Canada
 - can now employ a range of measures against threat actors to reduce the threat by influencing their behaviour or impeding their actions
 - new mandate extends to all categories of “threats to the security of Canada”, but excludes lawful advocacy, protest and dissent
- CSIS can undertake threat reduction measures in Canada and abroad
 - Matches the scope of CSIS's mandate to investigate threats to the security of Canada
 - Measures undertaken in consultation with partners as appropriate, such as the RCMP and Global Affairs Canada
- Certain measures are prohibited under any circumstances
 - e.g. death, bodily harm, violating sexual integrity, interfering in the course of justice
 - multiple other safeguards are also in place (e.g., thresholds to act, warrant requirement, independent review)



Part 4 – CSIS's Threat Reduction Mandate



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- The new warrant regime:
 - A Court warrant serves as an advance judicial ruling that the infringement is reasonable under s. 1 of the Charter, which guarantees the rights and freedoms set out only “subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.
 - The Court ensures that the threat reduction measures proposed by CSIS are reasonable and proportional.
 - No court can authorize acts contrary to the Charter.
 - Hence, the process ensures CSIS' actions conform to the Charter as a whole.



Part 4 – CSIS' Threat Reduction Mandate Implementation



MODERN, SAFE AND RESILIENT CANADA

Status of Implementation:

- Ministerial direction has been issued to steer CSIS' use of its new threat reduction
- CSIS has established robust internal policies, procedures and training
- CSIS has begun taking threat reduction measures
 - CSIS has not yet applied for threat reduction warrants
- The Security Intelligence Review Committee (SIRC) has the authority to review all CSIS activities, including threat reduction measures
 - SIRC is required by law to examine at least one aspect of CSIS' use of its new mandate every year



Part 5 – *Immigration and Refugee Protection Act (IRPA) Amendments*



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- **ISSUE:**

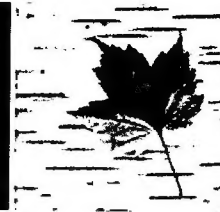
- Division 9 of the IRPA (includes security certificates) allows for the use and protection of classified information in immigration proceedings
- Over time, disclosure obligations became overly broad to include irrelevant information
- There was no way to immediately appeal during a proceeding when a judge ordered classified information to be disclosed publicly
- This led to a heightened risk to highly sensitive information; and increased length, complexity and costs of litigation

- **Example:**

- Government had to withdraw evidence from a case rather than disclose classified information publicly because it could not appeal the order; the case could not continue



Part 5 – Changes to security certificate proceedings



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What do the amendments do?

- Only apply to new cases
- Clarify that only relevant information forms part of security certificates
- Allow the Minister to appeal immediately a judge's decision to disclose classified information publicly
 - No longer have to wait until the end, when such an appeal could come too late
- Allow the Minister to request an exemption from providing some information to the special advocates, provided that it would not be useful to the person subject to the certificate
 - Judge can consult the special advocates about the Minister's request for an exemption before deciding whether to grant it

